

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JEAN BERNIER,

Plaintiff,

-v-

9:17-CV-254

KOENIGSMANN *et al.*,

Defendants.

APPEARANCES:

JEAN BERNIER
Plaintiff, Pro Se
116-30 131st Street
Queens, NY 11420

WILSON, ELSEY LAW FIRM
Attorneys for Defendants
Koenigsmann, Jones, Coryer,
Donnelly, O'Connor-Ryerson,
Gilfus, Hesse, Ashley, Gardner,
Dinello, and Mueller
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DAVID N. HURD
United States District Judge

OF COUNSEL:

NICOLE E. HAIMSON, ESQ.

JAMES A. MEGGESTO, ESQ.

ORDER ADOPTING REPORT & RECOMMENDATION

On March 6, 2015, pro se plaintiff Jean Bernier (“plaintiff”) filed this civil rights action alleging that defendants violated his constitutional rights while he was incarcerated at Auburn Correctional Facility and Southport Correctional Facility. Dkt. No. 1.

After plaintiff amended his complaint, Dkt. No. 20, the Western District of New York severed a number of his claims and transferred them to this judicial district, Dkt. Nos. 50, 51. Thereafter, the Court accepted plaintiff’s Second Amended Complaint for filing. Dkt. No. 57, 63, 64.

On July 28, 2017, defendants filed a partial motion to dismiss pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). Dkt. No. 71. That motion was granted as to certain defendants and claims on March 15, 2018. Dkt. No. 96, 104. At the request of the plaintiff, several other defendants were dismissed from this action on July 30, 2019. Dkt. Nos. 143–45.

The parties completed discovery into plaintiff’s (1) Eighth Amendment medical-indifference claims against defendants Ashley and O’Connor-Ryerson; (2) Eighth Amendment medical-indifference claims against defendants Koenigsmann, Mueller, Dinello, Jones, Coryer, O’Connor-Ryerson, Ashley, Gardner, and Jeavons; (3) First Amendment retaliation claims against defendants Ashley, O’Connor-Ryerson, and Jeavons; and (4) First Amendment retaliation claims against defendants

Hesse, Gilfus, and Donnelly. Defendants have moved for summary judgment on these claims pursuant to Rule 56. Dkt. Nos. 210, 213.

On May 13, 2021, U.S. Magistrate Judge Andrew T. Baxter advised by Report & Recommendation that defendants' motions for summary judgment be granted and that plaintiff's Second Amended Complaint be dismissed. Dkt. No. 229. Plaintiff has not filed an objection, and the time period in which to do so has expired. *See id.*

Upon review for clear error, the Report & Recommendation is accepted and adopted in all respects. *See FED. R. CIV. P. 72(b).*

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 229) is accepted and adopted; and
2. Plaintiff's complaint is DISMISSED with prejudice.

The Clerk of the Court is directed to enter a judgment accordingly and close the file.

IT IS SO ORDERED.



David N. Hurd
U.S. District Judge

Dated: June 3, 2021
Utica, New York.